

SUBJECT: DWI/DUI	NUMBER: 2-17.02
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: OPR.07.06	APPROVED: Sheriff

I. POLICY

The Department encourages deputies to enforce Driving While Under the Influence of Intoxicating Liquor or Drug statutes in order to remove persons suspected of driving under the influence of alcohol, or other substances, from public places. The procedures are intended to serve as guidelines in D.W.I. Enforcement.

II. RULES AND REGULATIONS

A. Deputies suspecting that the driver of a motor vehicle is under the influence of alcohol or other substance may take the following actions:

1. Routine Traffic

- a) Observe the suspect's driving behavior for a safe distance to determine reasonable suspicion or probable cause to stop the vehicle.
- b) Stop the vehicle at a safe location for the protection of the suspect, deputy, and any vehicular traffic.
- c) Observe the suspect to determine if he might be under the influence. Once this is determined, request that the suspect take sobriety tests, which are described in the next section.
- d) When it is determined that the person may be intoxicated, the suspect should be placed under arrest.
- e) The suspect's vehicle shall be towed, following the department policy. The vehicle may be released to a responsible person at the deputy's discretion.
- f) Advise the suspect of the Implied Consent Act, and request him/her to give a sample of his breath, blood, or both. If the suspect refuses, inform him of the consequences of refusing. If a substance other than alcohol is suspected, a blood test should be requested.
- g) Transport the suspect to the Valencia County Sheriff's Department for booking and a breath/blood test.

2. Crash Investigations

If there is probable cause that a driver involved in a crash is intoxicated, the same procedures apply as above with the following exceptions:

If injuries sustained in the crash are fatal, life-threatening or may result in great bodily

harm, the district attorney's office will be contacted via telephone for consultation prior to any charges being filed.

B. Sobriety Testing:

Standard Field Sobriety Tests (SFST's) shall be administered unless medical/age impairment exists. Alternative sobriety tests will be administered if SFST's are not appropriate.

C. DWI Required Paperwork

1. Arrest Report: An arrest report will be completed on each DWI arrest. The narrative section of the report should provide in detail the series of events that lead to the subject's arrest for DWI.
2. DWI Citation: A DWI citation and deputies statement, on a form approved by the State, will be completed on each DWI arrest.
3. Criminal Complaint: A Criminal Complaint will be completed on each DWI arrest. If this is a second or subsequent arrest, it must be annotated on the Criminal Complaint.
4. Intoxilyzer Report: A copy is given to the suspect, a copy is attached to the MVD paperwork and a copy is attached to the arrest report and forwarded to Records division.
5. Blood Kit Report: A Blood Kit Report, on a form approved by the State, will be completed on any DWI arrest where a sample of blood is drawn in addition to, or instead of, a breath sample.
6. If the subject has a valid, current New Mexico Driver's License in their possession, and the BAC was over .08 for drivers 21 years of age or older (.02 for drivers under the age of 21), or if the test is refused, the driver's license will be confiscated. The 'Notice of Revocation' will be provided to the offender.

D. Breath Testing Instrument Operation

1. Only deputies that are certified to operate the breath testing instrument will perform any tests on subjects arrested for DWI.
2. The subjects will be informed of the Implied Consent Act and a 20 minute deprivation period will be observed with no substances in their mouth.
3. After the deprivation period time has expired, the subject will be requested to provide a sample of his breath, blood, or both. If the subject refuses, he will be advised of the consequences for refusing to submit to chemical testing of his breath, blood or both.
4. If the subject agrees to provide a breath sample, the certified operator of the breath

testing instrument will conduct the test in accordance with the rules and regulations established by the New Mexico Department of Health.

5. After testing is completed, the subject will be provided with a copy of his results as soon as they are available to the deputy.
6. Deputy will ensure that the required information is recorded in the Intoxilyzer Log Book.

E. Blood Testing

1. If a subjects B.A.C. is low, and in the deputy's opinion is not consistent with his/her apparent level of intoxication, the deputy may choose to complete a blood test also to test for drugs.
2. If the subject sustained injuries as a result of the crash and in all likelihood will not be able to perform a breath test, a blood test will be requested.
3. If a blood test is requested, the person will be transported to a medical facility as needed and a blood kit approved by the New Mexico Department of Health shall be used. The process of withdrawing blood will be conducted in accordance with New Mexico statutes.
4. When a blood test is used, the Notice of Revocation will not be forwarded to MVD but will be maintained in the approved location until the results are returned from the blood test.
5. Once the subject has submitted to a test(s) of our choosing, they may request a test of their own for independent testing. If a blood test is requested, the following procedures will be used:
 - a) The subject will be allowed to contact a physician or nurse of his/her choosing by phone to make arrangements to meet to draw the blood.
 - b) A standard blood kit approved by the state will be used regardless of whom draws the blood.
 - c) Once the blood is collected, the arresting deputy will complete an evidence form and a letter to the independent laboratory (kept in the same location as blood kits) attach them to the blood sample and place in the designated location.
 - d) The arresting deputy will complete and provide the suspect a copy of the evidence form as a receipt for the blood. The deputy will advise the subject of their responsibility to advise the Department which independent laboratory they wish the sample to be sent to.
 - e) The blood sample will be maintained in the property room at the Valencia County Sheriff's Department for a minimum of 90 days. At the conclusion of that 90 day period, the arresting deputy will obtain a disposition on the case.

- i. If there has been a conviction and sentence has been imposed, the blood sample will be maintained for another 30 days following the sentencing date. Following this 30 day period, if an appeal has not been filed the blood sample will be destroyed. If an appeal has been filed, the sample will be maintained until a final disposition is determined.
- ii. If no disposition is available after the 90 day period the sample will be maintained until a final disposition is determined.

F. Sobriety Checkpoints

Sobriety checkpoints are an established means of deterrence and public education and have withstood constitutional scrutiny when properly implemented. The effectiveness of a checkpoint should be measured by the reduction of alcohol related crashes and not simply by the number of persons arrested as a result of a checkpoint.

1. Guidelines For Sobriety Checkpoints

a) Role of supervisory personnel:

The selection of the site and procedure for conducting it must be made and established by supervisory law enforcement personnel rather than deputy in the field. This is essential to reduce the possibility of improper, unbridled discretion of the deputy who meet and deal with the motoring public.

b) Restrictions – no discretion of field deputy:

It is important that the discretion of field deputy be restricted. Automobiles should not be stopped randomly. It is wise to instruct deputy orally and in writing on uniform procedures to be utilized when stopping motorists. As nearly as possible, each motorist should be dealt with in precisely the same manner.

c) Safety:

The safety of the motoring public and the field deputy should also be given proper consideration. Safety measures aimed at warning approaching traffic, the degree to which the roadblock causes traffic congestion and whether the roadblock is set up on such a way so as to put the motoring public and deputy in unnecessary peril.

d) Reasonable Location:

The location of the roadblock is significant in determining the degree of intrusiveness and safety of the public and police.

e) Time and duration:

This factor also bears on the intrusiveness and effectiveness of the roadblock. Reasonableness is the standard.

f) Indicia of official nature of the roadblock:

The official nature of the roadblock should be immediately apparent. A deputy in the field should be uniformed; police cars should be marked; and warning or stop signs, flares and pylons are advisable. The roadblock scene should strike an appropriate balance to provide for high visibility at the roadblock, yet minimize the potential fear and apprehension to the public. In addition to being important for safety reasons, these indicia will reassure motorists that the stop is duly authorized.

g) Length and nature of detention:

The average length of time that a motorist is detained at the roadblock and the degree of intrusiveness should be minimized. This will avoid lengthy delays and traffic congestion. Initially, motorists should be detained only long enough to be informed of the purpose of the stop and to look into the vehicle for signs of intoxication. Where facts within the observation of the deputy warrant further investigation, the suspected motorists should be asked to pull into a separate testing area so as not to unreasonably inhibit the flow of traffic

h) Advance publicity:

The deterrence value of any roadblock and its reasonableness for sobriety checks will be enhanced if given widespread publicity.

2. Site Selection And Safety Considerations

- a) Selection of sobriety checkpoint sites must consider the safety of the public and all department personnel involved in the operation. Locations selected must have maximum visibility to traffic from both directions with adequate safety lighting. In addition, sufficient adjoining space must be available to pull the suspect's vehicle off the roadway for further inquiry and testing if reasonable suspicion of DWI is developed. Alternate sites will be selected in the event that primary areas are unavailable. In order to conduct a sobriety checkpoint. The Decision to set up a sobriety checkpoint, the selection of the site, and the procedures for conducting it must be and approved by the Sheriff or his designee prior to each occasion.
- b) To insure maximum safety precautions for the public and enforcement personnel, a sufficient number of warning signs, portable lights, traffic cones, and police cars with warning lights flashing should be utilized.

3. Notice To Public/Media

The public that precedes this operation serves to educate and inform the public of our enforcement efforts. The media attention is aimed at deterring the potential DWI offender. Advance notice to the public must be made. The date of the intended checkpoint is to be announced without disclosing the precise location.

4. Operational Procedure

- a) Every vehicle is to be stopped.
- b) The driver, primarily, is to be questioned since driving while under the influence of intoxicating alcohol or drugs is the purpose for the checkpoint.
- c) The vehicle is to be detained for no more than approximately three minutes, unless reasonable suspicion exists that the driver is DWI or that another crime or violation has been committed by any occupant of the vehicle.
- d) The occupants of the vehicle are to be told the purpose of the stop. Deputies will ask the driver for their license, vehicle registration, and proof of current insurance.
- e) If traffic begins to back up creating traffic congestion, all of the stopped vehicles are to be waved through.
- f) A driver will be allowed to continue after the initial stop unless the deputy develops,

by observation, a reasonable suspicion that the driver is DWI or that another crime or violation has been committed by any occupant of the vehicle.

- g) A typical checkpoint should last no longer than necessary to achieve its stated purpose.
- h) Upon completion of a checkpoint operation, or soon thereafter, the supervisor will note the checkpoint activity and he or she will forward the reports to the Traffic Safety Grants Administrator and the Captain.
- i) No deviations of these procedures are allowed without the express permission of the field supervisor.

III. DRUG RECOGNITION EXPERT

A. DRE Deputy duties and Responsibilities

- 1. Responds to requests requiring drug recognition skills and performs DRE evaluations in accordance with State of New Mexico DRE Regulations.
- 2. Arrests persons suspected of Driving While Under the Influence of Alcohol or Drugs.
- 3. Conducts breath test or directs blood and urine tests on suspected DWI offenders and logs results.
- 4. Prepares DRE events report and supplement report that is submitted to the records division.
- 5. Prepares a DRE event log report to be turned in at the end of each month to the State DRE Coordinator.
- 6. Are responsible for the collection and securing any evidence collected.
- 7. Are responsible for maintaining copies of all drug evaluations, evaluation logs, certification and re-certification and progress logs.
- 8. Will maintain all issued equipment in good working condition.
- 9. Will report any equipment discrepancies to the chain of command and the state DRE Coordinator.
- 10. DRE deputies are responsible for the drug evaluation investigation. The arresting officer will be available to maintain officer safety during the evaluation.

B. DRE call out procedures

- 1. Deputies may call-out DRE personnel in cases where:
 - a) A subject shows physical impairment based on performance of Standard Field
 - b) Sobriety Tests (SFSTs) and/or operation of a vehicle and gives a low breath test

- c) score (below .08% blood alcohol content) on the intoxilyzer.
- d) There is a case of a fatality or serious injury crash.
- e) Circumstances lead the investigating officer to believe that the impairment of the subject is due to illegal street narcotics, prescription medications, or volatile substances.
- f) When called to assist, it will be the DRE Officer's responsibility to determine if a blood technician will be called out.

2. Investigating Deputies should consider the following circumstances in deciding whether or not to call-out DRE personnel:

- a) Drug possession by the subject.
- b) Presence of drug paraphernalia on subject or in the vehicle.
- c) Incriminating statements of drug use by the subject.
- d) Odor of narcotics or volatile substances on the subject.
- e) Fresh injection marks on the subject.
- f) Physical characteristic of the subject (pupil size, slurred or rapid speech, body tremors, etc.).
- g) Whether or not the subject admits to being ill or to taking medication.
- h) If there has been a crash, has the subject suffered a blow to the head or other injury?

3. In all cases deputies requesting a DRE will get approval from the on duty supervisor prior to calling DRE. Supervisors will review the information and make a determination if a DRE should be called out.